

2004

# State of Utah v. Paula Poulson: Brief of Appellant

Utah Court of Appeals

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UTAH APPELLATE COURTS

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IN THE COURT OF APPEALS FOR THE STATE OF UTAH

STATE OF UTAH, )  
 ) APPELLANT'S BRIEF  
Appellee/Plaintiff, )  
 )  
vs. )  
 )  
PAULA POULSON, ) No.: 20040499-CA  
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ENTERED IN THE SIXTH JUDICIAL DISTRICT COURT  
FOR SAN PETE COUNTY, STATE OF UTAH. THE  
HONORABLE KAY MCKIFF, TRIAL JUDGE.

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Both Article I, Section 14 of the Utah State Constitution and the Fourth Amendment to the United States Constitution prohibit unreasonable searches and seizures. The language under the Fourth Amendment is almost identical and provides as follows:

The right of people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures shall not be violated, and no warrant shall issue but upon probable cause supported by oath or affirmation, particularly describing the place to be searched and the person or things to be seized.

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## JURISDICTION OF APPELLATE COURT

Authority for said appeal is found within the confine of Rule 26 of the Utah Rules of Criminal Procedure; Utah State Constitution Article 1, Section 12; Utah Code Annotated Section 77-1 6(g); and Section 78-2-2 (i) Utah Code Annotated. The matter was appeal originally to the Utah Supreme Court but later assigned to this Court.

### **STATEMENT OF ISSUES**

The defendant's home was searched pursuant to a search warrant. Appellant argues that the affidavit in support the issuance of the warrant was constitutionally deficient.

The defendant argues that the affidavit is lacking in the following respects:

- (1) The affidavit failed give probable cause to issue the search warrant. The warrant was based on information from unnamed informants. There was no attempt to verify their reliability nor date any of the informant's conclusions. There was no effort to either detailed substantiation or any independent corroboration.
- (2) The affidavit failed to give sufficient cause to obtain permission to enter without notice and authority (no-knock).



### **STATEMENT OF CASE**

Defendant entered a “Sery Plea“ to the charge of illegal possession of a controlled substance, a third degree felony. The defendant preserved her right to appeal the trial court’s denial of two motions to suppress the evidence challenging the constitutionality of the search warrant.

The Appellate Court should "determine whether the issuing magistrate had a substantial basis for concluding that there were enough facts within the affidavit to find that probable cause existed." In so doing, the Court should consider the affidavit "in its entirety," State v. Anderson, 701 P.2d 1099, 1102 (Utah 1985); State v. Collard, 810 P.2d at 886.

### **STATEMENT OF RELEVANT FACTS**

A magistrate issued a search warrant on August 14, 2002. It authorized entrance into the appellant’s home at 480 North 100 West, Mt. Pleasant, Utah. The warrant authorized a search without notice of authority.

The affidavit’s basis for the issuance of the warrant is as follows:

- (3) Since June 19, 2002, the officer has received information from one citizen informant that a lot of short term traffic had arrived and departed the residence of 480 North 100 West.
- (4) The citizen informant gave information about vehicle licenses and personal knowledge of individuals going to the residence.
- a. No date is given for these observations. The only date suggested is June 19 wherein the affiant reports that he started receiving reports. He applied for the warrant 52 days later on August 10.
  - b. No information is give as to how such an informant gathered the information and no information is given as to why this informant should be deemed reliable.
- (5) Based on this first informant's information, criminal histories were ran on those persons visiting the Poulson home. Those seven (7) persons were identified as:
- i. Gary Sorenson was arrested for four offenses but convicted of only of one-- Distribution and Possession of Methamphetamine. He was arrested for Carrying a Concealed Weapon and Domestic Violence.

ii. John Ramey. He was arrested for Aggravated Burglary, Narcotic Equipment, Amphetamine Possession, but convicted only of assault.

iii. Kenneth Hinton was convicted of two drug related offenses and arrested for two more.

iv. David Timms was convicted of Possession of a Controlled Substance and Escape. He was arrested for Distribution and Paraphernalia.

v. Jessica Shelly was convicted of Possession and Paraphernalia. She was arrested for Possession with Intent, paraphernalia and Distribution.

vi. Allen Stevens was convicted of Possession of Marijuana and arrested for Domestic Assault.

vii. Terry Hanks has been convicted of Possession of marijuana. Interestingly, no dates are given for any conviction or arrest.

The affiant reports that, in addition to the names noted above, 14 others separate car have arrived at the residence at different times and dates. Sometimes, some of these have been there more than once.

- a. Again no dates are given.
  - b. The source of the information is not disclosed.
  - c. The affidavit does not set out why this information is reliable.
  - d. The affidavit is absence why 14 cars appearing at a residence over an undisclosed time is significant. If we used the June 19<sup>th</sup> as a beginning date, one car would appear every 3-4 days.
- (6) The affiant reports that another unnamed informant met with two other officers and reported that that Paula Poulson has been and is selling methamphetamine.
- a. There is no corroboration of this information. However, the affiant advises that he believes the information is reliable because it coincides with the information from another second unnamed informant talking who apparently reported to other officers---double hearsay.
  - b. There is no assertion nor basis of the reliability assigned to this information or to the other unnamed informant.

- c. There are no dates given and no factual basis given for the informant's conclusion. As with most of the affidavit, we are offered only conclusions without substantiation of facts.

(7) This second citizen informant disclosed that he has seen Paula Poulson picking up methamphetamine from Gary Sorenson's home. The informant reports having personal knowledge that Paula Poulson was selling methamphetamine for Gary Sorenson.

- a. No dates are given.
- b. No information is given as to the underlying basis for this conclusion.
- c. The officer does not know this informant but acknowledges that this informant is not the same as the initial informant. This informant spoke with other officers not himself.

(8) The affiant reports that detectives did execute a search warrant on August 8, 2002 at Gary Sorenson's house and found both drugs and paraphernalia. It is to be noted that Sorenson was not at home.

(9) However, Sorenson had been seen at Poulson's residence on August 9<sup>th</sup> and 10<sup>th</sup>.

- a. However, the source of this information is not given; and
- b. No reliability is asserted for its trustworthiness.
- c. It is to be noted that this is substantially to only relevant date given.

No effort was made to set out a relevant time frame excepting that Sorenson was seen at the Poulson home on August 9 and 10<sup>th</sup>, 2002.

The only of reference to any date is that affiant had receiving a report from a citizen informant on June 19, 2002.

Respecting the three informants:

1. All are unnamed.
2. No basis is offered to determine their reliability. There is not even an assertion of reliability except where one unconfirmed report is referred to as supporting another unconfirmed report.
3. There is no detailed information offered to determine how the informants drew their conclusions.
4. There is no effort to corroborate any of the data.

**No-Knock.** The grounds for the issuance of a ‘no knock’ warrant is reportedly the persons going to the residence have a history of violence ranging from assault to weapons and concealed weapons violations. However, the data given of all the persons to the home reports only one conviction for any conduct involving violence (*John Ramey--- Assault.*)

No data is given as to when John Ramey was present. We do not know how often John Ramey has been at the home. We do not know if his presence at the home was within days, months or years. We do not know if he was a guest; person making some repairs to the home; delivery commercial products or other legal activity.

This request is also based on an undated report from an unnamed informant without any basis to assign any reliability to it.

### **SUMMARY OF ARGUMENT**

The affidavit here is based on three unnamed informants. The informants offer conclusion without any detailed factualize information. No relevant time periods are assigned to any of the informant’s reports.

Search warrants should not be issued except upon a finding of reliability. Under Utah case law, the information must be analyzed focusing on the following:

2. The type of tip or informant involved
3. Did the informant give enough detail about the observed criminal activity to support the issuance of a search warrant.
4. Did the police officer's personal observations the informant's tip.

Here, the affidavit is deficient for the following reasons:

1. The information is from an unnamed informants.
5. There was no detailed factual basis offered only conclusions.
6. There was no effort to corroborate the information provided; and
7. No relevant time periods were assigned to any critical date.

POINT I--- THE SEARCH WARRANT WAS ISSUED WITHOUT ANY SHOWING OF PROBABLE CAUSE THAT THE ITEMS SOUGHT WERE IN THE DEFENDANT'S RESIDENCE.

a. Determining Probable Cause.

No warrant shall issue but upon a finding of probable cause.

Fourth Amendment, U.S. Constitution; Art. I Section 14 Utah State



Constitution. State v. Purser, 828 P.2d 515, 517 (Utah App. 1992); State v. Babbell, 770 P.2d 987, 990 (Utah 1989).

Citizens are protected from unwarranted intrusions, especially into their homes. The Constitution, both State and Federal, mandate that unless the police can show a magistrate probable cause to enter a home, they shall not enter.

- a. The Police must convince the Magistrate that there is probable cause to believe that items sought are where they seek to search. General searches are unconstitutional.

Believing a suspect is a criminal is not by itself adequate to search his/her home. There must exist probable cause to believe that the things sought as objects of the warrant are located in the place to be searched. State v. Potter, 860 P.2d 952 (Utah Ct App. 1993); U.S. v. Ramos, 923 F.2d 1346 (9<sup>th</sup> Cir. 1991); State v. Sholes, 818 P.2d 343 (Idaho Ct. App. 1991).

In determining whether probable cause exists, the magistrate must "make a practical, common-sense decision whether . . . there is a fair probability that contraband or evidence of a crime will be found in a

particular place." Illinois v. Gates, 462 U.S. 213, 239, 103 S.Ct. 2317, 2332, 76 L.Ed.2d 527 (1983). State v. Potter, 860 P.2d 952 (Utah Ct App. 1993).

In State v. Potter, 860 P.2d 952 (Utah Ct App. 1993) this Court found probable cause lacking that the property sought is present where the police seek to search. See also U.C.A. 77-23-203.

Here, the best evidence suggesting that drugs are at the Poulson home is tangential, at best. It is the following:

- (1) Seven persons with some criminal history were at the home arguable over a fifty-two (52) day period. The fifty-two day period is surmised from the date of the warrant's application and the date inferred when an informant started noting persons being present.

The Potter Court held that the presence of a convicted drug user does not indicate that drugs would be found in the home. It may be proof of prior involvement but not a predictor of future use.

- (2) Fourteen (14) cars appearing at arguably a rate of one over 3-4 days. A recluse may have more cars showing up at his place than one every 3-4 days. (52 days / 14 cars).
- (3) An unnamed informant suggested that Poulson was picking up methamphetamine from Sorensen and selling it for Sorensen. No specification is given that she is selling from the home. The better indicator would be that drugs may be at Sorensen's home but not Poulson's. No dates are given other than this generalized conclusion.

There must be a nexus drawn between the place to be searched and the items sought. Here, none existed.

Further, this information is not reliable since it relies on an unnamed criminal informant.

### c. Reliability of Unnamed Informants

Because probable cause is predicated on information from an informant, we first examined the informant's tip together with police observations corroborating the report. State v. Valenzuela, 37 P.3d 260 (Utah Ct. App. 2001). See also Gates v. Illinois, 462 U.S.213, 238, 103 S.

Ct 2317, 2332 (1983). Here the police seek to use three (3) separate informants. All are unnamed.

The determination of reliability is premised on the analysis set forth in Kaysville City v. Mulcahy, 943 P.2d 331 (Ut. Ct. App. 1997). See also State v. Valenzuela, 37 P.3d 260 (Utah Ct. App. 2001).

This same analysis was thereafter applied for a probable cause determination for search warrants. See State v. Saddler, 2003 UT App 82, 67 P.3d 1025 cert. granted, 76 P.3d 691 (Utah 2003) and State v. Dabble, 81 P.3d 783 (2003 Utah Ct. App.). However, this analysis is also set out in Illinois v. Gates, 462 U.S. 213, 239, 103 S.Ct. 2317, 2332, 76 L.Ed.2d 527 (1983).

In Mulcahy, an informant called police dispatch to report a suspected drunk driver. The report included the informant's name and address, a description of the car involved, the direction of travel and the street name where the suspect was last seen as well as the suspect's name and phone number. This information was passed along to dispatch and then to a patrol officer. Based on this information, the officer stopped Mulcahy.

This Court found that the tip was sufficiently reliable to support a reasonable articulable suspicion based on the details set out by the tip. The Court, however, pronounced three factors to consider the reliability and sufficiency of the informant's tip.

Our first focus is upon **"the type of tip or informant involved,"** granting identified informants substantially more credibility than anonymous informants. Next, we examine **"whether the informant gave enough detail about the observed criminal activity to support a [seizure],"** and concluded that "[a] tip is more reliable if it is apparent that the informant observed the details personally, instead of relaying information from a third party." Finally, we examine **"whether the police officer's personal observations confirm the dispatcher's report of the informant's tip,"** noting that an officer can corroborate the information "either by observing the illegal activity[,], or by finding the person, [and the other material facts] substantially as described by the informant."

In Valenzuela, the arrest was based on a tip from an unnamed bank teller. The Court found reasonable cause lacking. The informant's name was not known, although it is clear the information came from a bank teller. The informant's basis of knowledge of suspected criminal activity was not known and there was no corroboration by the officer. Without more, the Court found the tip deficient to justify an immediate stop and search of the accused. The Valenzuela Court applied the Mulachy analysis.

In State v. Sadler, the Court applied the same analysis to search warrants. There the Court found the affidavit deficient.

In Sadler, the affidavit advised, "CI has not been promised nor paid for any of the information provided". The affiant claimed "CI . . . provided the information out of a sense of guilt and desire to stop the sales and usage of controlled substances into the community". The CI also knew the suspect, Saddler, for over one year. However, the informant remained unnamed.

Appellant here, applying the same analysis, finds all the informants here are unnamed. In fact, both Sadler and Valenzuela both have considerably more information referencing the identity of the informants than here.

### INFORMANTS

The first informant, reportedly a citizen informant, gives nonspecific reports of certain people seen at Poulson's home. The affiant states that he starting receiving the reports on June 19, 2002 (nearly two months prior to the application for the search warrant). The informant tells that seven (7) people have been seen at the home. If you used June 19 as

the commencement date, over the next 52 days, one identified person showed up about every seven days.

The affiant included this as significant due to the criminal histories of the seven (7) persons reported. However, as noted, in State v. Potter, the presence of people with a drug history, cannot be used to concluded that drugs are at the home. See also State v. Sykes, 840 P.2d 825 (Utah Ct. App. 1992), where this Court found that a person leaving a suspected drug house does not equate to reasonable cause to stop him.

The second informant, a criminal informant, reportedly gives information to two other officers. The informant's report is that Poulson is selling methamphetamine for Sorenson. This informant is unnamed and there is no attempt to distinguish this report from a rumor. No dates are given.

The third informant reports that he witnessed Poulson picking up methamphetamine from Sorenson's home. Again, the informant is unnamed and there is no assertion of reliability and again no date is given.

The common thread shared by all is that they are anonymity. We know nothing about them except the first and third are identified as citizen informants and the second as a criminal informant.

Under the guidance of both Sadler and Valenzuela, unnamed informants are not granted any indicia of reliability. This is also the holding of Illinois v. Gates, 462 U.S. 213, 239, 103 S.Ct. 2317. See also State v. Deluna, 2001 Ut App 401, 40 P.3d 1136.

As noted in Davis v. State, 447 S.E.2d 68, 70 (Ga. Ct. App. 1994) an anonymous tipsters should not automatically be deemed “concerned citizens” without some showing of a factual basis to conclude that he/she is in fact credible.

*The informant was merely an anonymous tipster, not entitled to preferred status regarding the credibility of his information. The complete lack of information about the informant relegated the information he supplied to the status of rumor.*

Here, we know nothing of the informants excepting the affiant’s assertion that the first and third are citizen informants. He gives us nothing to support this conclusion.

#### UNNAMED INFORMANT’S RELIABILITY



In Utah, anonymous tips are on the low-end of reliability. State v. Mulcahy, 943 P.2d at 235. State v. Sadler, supra State v. Dabble, supra. Hiding behind a cloak of anonymity precludes the magistrate from assigning any reliability. State v. Deluna, 2001 Ut App 401, 40 P.3d 1136.

The affiant fails to advise that he knows the informants or their identification. He fails to establish how these communications were made. The placement of such identifying markers within the affidavit are so simply made that it mandates the question as to why not?

The magistrate obligation is to distinguish between rumor and fact. The magistrate must find that the information set forth is reliable. With the affidavit failing to provide such critical information, the magistrate is incapable of judging the credibility of the tips. In their absence, the magistrate is unable to make a finding of reliability.

Here, nothing is offered.

Under the Mulcahy test, the affidavit may yet be sufficient if sufficient or detailed basis is set out the informant's tips that then may be reliable. In Illinois v. Gates, the United States Supreme Court determined

that information supplied by an unidentified informant could not alone create probable cause to support the issuance of a search warrant.

However, after examining the totality of the circumstances, the Illinois v. Gates Court further determined that the informant had provided "a range of details relating not just to easily obtained facts and conditions existing at the time of the tip, but to future actions of third parties not easily predicted." Id. at 245, 103 S.Ct. at 2335-36. In addition, "the facts obtained through the [officer's] independent investigation . . . at least suggested that the Gates were involved in drug trafficking." Id. At 243, 103 S.Ct. at 2335. Accordingly, based upon the quality and quantity of detail the informant provided, which the police independently corroborated, the court determined that the magistrate had "a substantial basis for . . . [concluding] that probable cause to search the Gateses' home and car existed." Id. at 246, 103 S.Ct. at 2336. This is also the analysis set out in Sadler, Dable, Mulcahy, and Valenzauela.

#### DETAILED INFORMATION/BASIS OF KNOWLEDGE

Here, we are offered only conclusions from the anonymous informants---seven people have been seen at the residence; Poulson is selling methamphetamine for Sorenson; and Poulson was seen picking up drugs at Sorenson's.

We do not know if they observed this themselves or if they are relying on hearsay or community rumor.

In State v. Droneburg, 781 P.2d 1303 (Utah App. 1989), the Court struck down a search warrant based on a Sheriff's conclusions. There the officer-affiant stated in the affidavit that a reliable confidential had told him that a supply of illegal substances was coming in. The Sheriff had used this informant before and had found him reliable. That was more than offered here. Here, we do not even have the officer asserting reliability.

There is no verification of detail. No knowledge or basis is given as to how the informant came about such information. We have, as in Droneburg, are offered only conclusions.

In Draper v. United States, 358 U.S. 307, 309, 79 S.Ct. 329, 331 (1959), a reliable confidential informant, who had been working for the DEA for at least the previous six months, informed a federal narcotics agent

that the defendant, a suspected drug dealer, would be arriving by rail in Denver, Colorado, carrying heroin. The informant's report contained the defendant's name, a detailed description of the defendant, a description of the clothes the defendant would be wearing on the date of his arrival, and the defendant's travel plans, including the date and time of the defendant's arrival.

In response, the agent went to the railroad station and saw the defendant who matched the "exact physical attributes" and was "wearing the precise clothing" described by the informant. Therefore, the agent arrested the defendant and searched him incident to the arrest, discovering a small amount of heroin. The Court found that the not-so-easily obtained information with the officer's corroboration of that description, the tip was sufficiently reliable to justify the detention.

In the present setting, no details are offered, only mere conclusions. Without more, no reliability can be assigned to these tips.

The third and final factor to be considered is the officer's corroboration of the tip provided.

#### OFFICER CORROBORATION

This final factor needed to substantiate the warrant's issuance is that the information gathered via the informant could be and was corroborated. There is no officer corroboration. The only corroboration suggest that the third unnamed source is corroborated by a second unnamed and admittedly criminal informant.

The police did nothing to corroborate the data.

### CRIMINAL ACTS V. INNOCENT CONDUCT

#### a. Persons visiting Poulson's Home

In State v. Potter, 860 P.2d 952 (Ct. App. 1993), the Court found that the fact that Potter was under investigation was of no help in the formulation of probable cause; i.e. it did not indicate that controlled substances would currently be found in his trailer. The Potter Court cited State v. Brooks, 849 P.2d 640, holding that information that defendant had been a target of investigations by local drug agencies during the past several years does not indicate that controlled substances will currently be found at his residence.

Secondly, the Potter Court held that the presence of a convicted drug user does not establish that controlled substances would presently be found in the Potter trailer. The Potter Court held that an individual's criminal record does not establish that he is currently dealing in controlled substances.

Here, the first informant told us that seven (7) people have been at Poulson's house that had been arrested or convicted of drug offenses. This inferred that a person with a criminal history would visit her home once every seven (7) plus days. If this is found significant, then the parent whose son or daughter associates with seven (7) friends have a criminal history becomes subject to search. The relevance of a past criminal history is only a history of past misdeeds and not a predictor of future events.

In State v. Brooks, 849 P.2d 640 (Utah App. 1993), the Court found properly that information that Brooks was under investigation by the drug task force had no value that controlled substances would be currently found at his residence. As further noted in State v. Potter, the Brooks court found:

Secondly, Brooks's criminal record also does nothing to establish that he is currently dealing in controlled substances, particularly since his most recent arrest was in 1988, at least two years prior to the events in the case at bar.

Here, the dates of any arrests or convictions are not dated. As noted in Brooks, an arrest of two years prior has no relevance.

### UNDATED INFORMATION

No dates are given relating to the observations and conclusions excepting the appearance of Gary Sorenson at Paula Poulson's home.

Generally, undated observation of narcotics being present have been held to be stale and unhelpful in determining reliability. Sitke v. State, 397 So. 2d 178, 182 (Ala. Crim. App. 1980). Anderson v. State, 331 A.2d 78, 106 (Md. Ct. Spec. App. 1975), Aff'd 427 U.S. 463 (1976).

The danger as noted by the First Circuit Court of Appeal in Rosencranz v. U.S. 356 F.2d 310, 317 (1<sup>st</sup> Cir. 1966) is that ancient information may be paraded before the Court masked as a bland present tense. In State v. Dable, 81 P.3d 8 783 (2003 Utah Ct. App.), the Court noted the importance of providing dated information:

Utah Informant told Utah Deputies that he had purchased methamphetamine from Dable's residence on two occasions, without giving any information about the recency of the purchases. Without any mention of how recently Utah Informant purchased drugs from Dable's residence, there is no way to determine whether the information is stale. "The question that arises with staleness is whether `so much time has elapsed that there is no longer probable cause to believe that the evidence is still at the targeted locale."

Here, the affidavit is absent of any relevant time periods---“ *there is no way to determine whether the information is stale.*” State v. Dabble.

This is especially true with easily disposable contraband--- probable cause may diminish quickly. In State v. Lunsford, 507 N.W. 2d 239, 243 (Minn. Ct. App. 1993) the Court disallowed a 7-11 day delay after observation of marijuana. In Ashley v. State, 241 N.E.2d 264, 269 (Ind. 1968), the Court held that 8 days was too long. See also State v. Josephson, 852 P.2d 1387, 1391-2 (Idaho 1993). A delay of 3 days was stale unless evidence existed of continuing drug possession of sales. State v. Wise, 434 So. 2d 1308, 1311-12 (La. Ct. App. 1983).

#### SIGNIFICANCE OF PEOPLE VISITING THE HOME?



Courts have been reluctant to justify the detention of a person who drove to a home, stayed a short time and left. In Lemon v. State, 580 So.2d 292 (Fla. App. 1991), a police officer, while patrolling a high crime area, observed a car stop in front of an apartment complex known for drug activity. He watched the driver enter the complex, return after a brief interlude, and then leave in the car. The court held that these circumstances were insufficient to justify stopping the driver, as "they amount to no more than a bare suspicion of illegal activity." Id. at 293. Those circumstances likewise did not justify a pat-down search for weapons after the defendant was stopped. Id.

In State v. Sykes, 840 P.2d 825 (Utah Ct. App. 1992) a similar case factually was presented with a similar ruling. The Court found that the officer lacked reasonable cause to stop a motorist when they had the following:

- (1) Neighbors had complained about individuals entering and leaving the house at all hours.
- (2) A deputy previously had purchased cocaine in the general area. Not present here.

- (3) There was unspecified information from a confidential informant. Applicable here.
- (4) There was an ongoing investigation of the house.
- (5) Defendant drove up to the house, entered it and left shortly thereafter.

A defendant's mere presence in an area suspected to harbor drug activity does not give rise to reasonable suspicion. Brown v. Texas, 443 U.S. 47, 52, 99 S.Ct. 2637, 2641, 61 L.Ed.2d 357 (1979).

### **NO KNOCK ENTRY**

Under the decision of State v. Ribe, 876 P.2d 403 (Utah App. 1994), the Utah Courts have recognized that a violation of the 'no knock' provisions may require a suppression of evidence.

The only basis to issue the 'no knock' would be John Ramey's prior conviction of 'assault'. No data is given as to the likelihood of Mr. Ramey being present. We do not know when he was observed at the home---

whether it was the day preceding, one month or even one year previous. We do not know the purpose of his visit. We have no indications that he would be at the home when the warrant was served.

The mere association of a person who may have a criminal record of assault should not invite the police to enter a home with guns drawn and without notice. State v. Brooks, 849 P.2d 640 (Utah App. 1993),

### **CONCLUSION**

This is poor police work. The police seek a warrant to search a home based on association with other persons. A confidential informant concludes that Poulson is selling drugs. However, this informant, as the other two, lack any indicia of reliability particularly:

1. No detailed observations.
2. No corroboration by the police.

Here, the affiant does no more than try to substantiate one informant by referring to a second unnamed informant. We do not even have the officer attesting to any informant's reliability.

Our homes should not be subject to search by our mere association with certain individuals. Further, these reports are undated.

This motion to suppress should have been granted. If not, we reward officers who will continue in their sloppy, if not lazy, methods.

DATED this 9<sup>th</sup> day of November, 2004.

  
Sherman Carter  
Attorney for Appellant

MAILING CERTIFICATE

I hereby certify that I mailed a copy of appellant's brief to:

Attorney General for the State of Utah (four copies)  
124 State Capitol  
Salt Lake City, Utah 84114

Utah Court of Appeals (eighth copies)  
450 South State  
#500  
Salt Lake City, Utah 84114-0230

Postage prepaid this 10<sup>th</sup> day of November, 2001.

  
Sherman Carter

## ADDENDUM

1. Search Warrant
2. Affidavit in Support of the Search Warrant

IN THE 6TH DISTRICT COURT  
COUNTY OF SANPETE, STATE OF UTAH

STATE OF UTAH            )  
                              : ss.  
COUNTY OF SANPETE    )

SEARCH WARRANT

To any Peace Officer in the State of Utah:

Proof of affidavit under oath having been made this day before me by DET. CLARK THOMAS, I am satisfied that there is probable cause to believe that

(X) on the premises known as 480 NORTH 100 WEST, MT. PLEASANT, UTAH. THE RESIDENCE HAS WOOD SIDING SOME WHITE SOME BROWN. CHARCOAL COLORED ROOF. MAIN ENTRANCE FACES SOUTH. ALSO A WEST FACING DOOR ON THE NORTH END OF THE HOUSE.

(X) in the vehicle(s) described as ANY VEHICLES AT THE RESIDENCE AT THE TIME OF THE EXECUTION OF THIS WARRANT.

In the City of MT. PLEASANT, County of SANPETE, State of Utah, there is now certain property or evidence described as:  
(items in search of)

METHAMPHETAMINE, PARAPHERNALIA TO CONSUME METHAMPHETAMINE, OWE SHEETS, PAPERS OR DOCUMENTS TO SHOW LEGAL OWNERSHIP OF THE HOME, SCALES AND PACKAGING MATERIAL. COMPUTER AND ANY DIGITAL STORAGE MEDIA THAT WOULD INCLUDE BUT NOT LIMITED TO 3X5 FLOPPY DISKS, ZIP DISKS AND CD ROMS AND ANY DEVICE THAT CAN BE CONNECTED TO THE INTERNET.

which property or evidence:

- (X) is unlawfully acquired or unlawfully possessed.
- (X) has been used as a means to commit a public offense
- (X) is being possessed with the purpose to use it as a means of committing or concealing a public offense.
- (X) consists of an item or constitutes evidence of illegal conduct, possessed by a party to the illegal conduct.
- ( ) is evidence of illegal conduct in possession of a person or entity not a party to the illegal conduct and good cause being shown that the seizure cannot be obtained by subpoena without the evidence being concealed, destroyed, damaged, or altered. (Conditions for service of this Warrant are included or attached hereto)

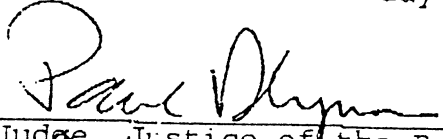
You are therefore commanded:

- (X) in the daytime
- ( ) at any time day or night (good cause having been shown)
- (X) (no knock) to execute without notice of authority or purpose, (proof under oath being shown that the object

of this search may be quickly destroyed or disposed of or that harm may result to any person if notice were given) THAT SOME OF THE SUBJECTS GOING TO THIS RESIDENCE HAVE A HISTORY OF VIOLENCE RANGING FROM ASSAULT TO WEAPONS AND CONCEALED WEAPONS VIOLATIONS. IT IS ALSO THE EXPERIENCE AND TRAINING OF YOUR AFFIANT THAT IF OFFICERS ARE ALLOWED THE ELEMENT OF SURPRISE, NOT ONLY IS THE EVIDENCE BETTER PRESERVED, BUT THE SAFETY OF THE OFFICERS, SUSPECTS, AND INNOCENT BY-STANDERS ARE BETTER PROTECTED BECAUSE IT REMOVES THE POSSIBILITY OF EVIDENCE DESTRUCTION, HOSTAGE SITUATIONS, AND BARRICADED STAND-OFFS.

to make a search of the above-named or described person(s), premises and vehicle(s) for the herein-above described property or evidence and if you find the same or any part thereof, to bring it forthwith before me at the 6TH DISTRICT Court, County of SANPETE, State of Utah, or retain such property in your custody, subject to the order of this Court.

Given under my hand and dated this 14TH day of AUGUST, 2002.

  
\_\_\_\_\_  
Judge, Justice of the Peace  
District Court

IN THE 6TH DISTRICT COURT, COUNTY OF SANPETE  
STATE OF UTAH

STATE OF UTAH            )  
                              : ss.  
COUNTY OF SANPETE    )

AFFIDAVIT FOR SEARCH WARRANT

BEFORE THE HONORABLE JUDGE PAUL LYMAN

The undersigned, being first duly sworn, deposes and says:

That affiant has reason to believe that

(X ) on the premises known as 480 NORTH 100 WEST, MT. PLEASANT, UTAH THE RESIDENCE HAS WOOD SIDING SOME WHITE SOME BROWN. CHARCOAL COLORED ROOF, MAIN ENTRANCE FACES SOUTH. ALSO A WEST FACING DOOR ON THE NORTH END OF THE HOUSE.

(X) in the vehicle(s) described as ANY VEHICLES AT THE RESIDENCE AT THE TIME OF THE EXECUTION OF THIS WARRANT. In the City of MT. PLEASANT, County of SANPETE, State of Utah, there is now certain property or evidence described as:

METHAMPHETAMINE, PARAPHERNALIA TO CONSUME METHAMPHETAMINE, OWE SHEETS, PAPERS OR DOCUMENTS TO SHOW LEGAL OWNERSHIP OF THE HOME, SCALES AND PACKAGING MATERIAL. COMPUTER AND ANY DIGITAL STORAGE MEDIA THAT WOULD INCLUDE BUT NOT LIMITED TO 3X5 FLOPPY DISKS, ZIP DISKS AND CD ROMS AND ANY DEVICE THAT CAN BE CONNECTED TO THE INTERNET.

and that said property or evidence:

- (X) is unlawfully acquired or unlawfully possessed.
- (X) has been used as a means of committing a public offense.
- (X) is being possessed with the purpose to use it as a means of committing or concealing a public offense.
- (X) consists of an item or constitutes evidence of illegal conduct, possessed by a party to the illegal conduct.
- ( ) consists of an item or constitutes evidence of illegal conduct, possessed by a person or entity not a party to the illegal conduct.

I believe the property and evidence described above is evidence of the crime of DISTRIBUTION OF METHAMPHETAMINE.

The facts to establish the grounds for issuance of a Search Warrant, are:

SEE ATTACHMENT A AND B

Your affiant considers the information received from the



confidential informant reliable because (if any information is obtained from an unnamed informant):

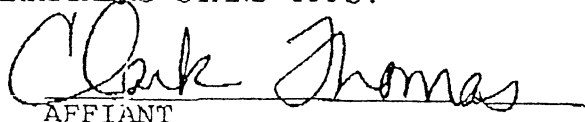
THE INFORMANT GAVE INFORMATION IN THE PAST THAT HAS BEEN PROVEN ACCURATE BY DET. THOMAS.

Your affiant has verified the above information to be correct and accurate because of the following independent investigation:

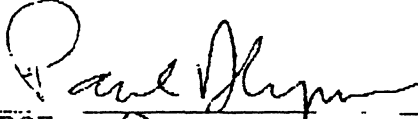
DET. THOMAS SPOKE WITH A CITIZEN INFORMANT THAT CONFIRMED THE INFORMATION GIVE BY THE CONFIDENTIAL INFORMANT.

WHEREFORE, the affiant prays that a Search Warrant be issued for the seizure of said items

- (X) in the daytime.
- ( ) at any time day or night because there is reason to believe it is necessary to seize the property prior to it being concealed, destroyed, damaged, or altered, or for other good reason.
- (X) (no knock) to execute without notice of authority or purpose, (proof under oath being shown that the object of this search may be quickly destroyed or disposed of or that harm may result to any person if notice were given). THAT SOME OF THE SUBJECTS GOING TO THIS RESIDENCE HAVE A HISTORY OF VIOLENCE RANGING FROM ASSAULT TO WEAPONS AND CONCEALED WEAPONS VIOLATIONS. IT IS ALSO THE EXPERIENCE AND TRAINING OF YOUR AFFIANT THAT IF OFFICERS ARE ALLOWED THE ELEMENT OF SURPRISE, NOT ONLY IS THE EVIDENCE BETTER PRESERVED, BUT THE SAFETY OF THE OFFICERS, SUSPECTS, AND INNOCENT BY STANDERS ARE BETTER PROTECTED BECAUSE IT REMOVES THE POSSIBILITY OF EVIDENCE DESTRUCTION, HOSTAGE SITUATIONS, AND BARRICADED STAND-OFFS.

  
AFFIANT

SUBSCRIBED AND SWORN to before me this 14TH day of AUGUST, 2002.

  
JUDGE \_\_\_\_\_  
Court District  
County of SANPETE, State of Utah

ATTACHMENT A AFFIDAVIT  
GROUNDS FOR ISSUANCE OF A SEARCH WARRANT

SINCE JUNE 19TH, 2002 I HAVE RECEIVED INFORMATION FROM A CITIZEN INFORMANT REGARDING A LOT OF TRAFFIC THAT IS SHORT TERM, ARRIVING AND DEPARTING WITHIN TWO TO THREE MINUTES AT THE RESIDENCE OF PAULA POULSON AND TERRY HANKS. THIS RESIDENCE IS LOCATED AT 480 NORTH 100 WEST MT. PLEASANT, UTAH. DETECTIVES OF THE CENTRAL UTAH NARCOTICS TASK FORCE HAVE BEEN WORKING THIS CASE SINCE JUNE 19TH, 2002.

THE CITIZEN INFORMANT GAVE ME INFORMATION ABOUT VEHICLE LICENSES AND PERSONAL KNOWLEDGE OF INDIVIDUALS WHO HAVE BEEN GOING TO THIS RESIDENCE. VEHICLE LICENSES HAVE BEEN RUN ON THE STATE WIDE COMPUTER AND THE OWNERS OF THE VEHICLES IDENTIFIED. ALSO CRIMINAL HISTORIES OF THOSE SUBJECTS HAVE BEEN OBTAINED FROM THE STATE COMPUTER.

THE FOLLOWING INDIVIDUALS HAVE SHOWED UP AT THIS LOCATION ON MORE THAN ONE OCCASION.

1. GARY L. SORENSON D.O.B. 3-01-63 HAS BEEN ARRESTED FOR:
  - A. DISTRIBUTION OF METHAMPHETAMINE CONVICTED
  - B. POSSESSION OF METHAMPHETAMINE CONVICTED
  - C. CARRYING A CONCEALED WEAPON
  - D. DOMESTIC VIOLENCE
  
2. JOHN C. RAMEY, D.O.B. 10-16-58 HAS BEEN ARRESTED FOR:
  - A. AGGRAVATED BURGLARY
  - B. NARCOTIC EQUIPMENT POSSESSION
  - C. AMPHETAMINE POSSESSION
  - D. ASSAULT CONVICTED
  
3. KENNETH HINTON D.O.B. 12-28-74 HAS BEEN ARRESTED FOR:
  - A. POSSESSION OF HALLUCINOGEN
  - B. POSSESSION OF NARCOTIC EQUIPMENT
  - C. POSSESSION OR USE OF CONTROLLED SUBSTANCE CONVICTED
  - D. POSSESSION OF DRUG PARAPHERNALIA CONVICTED
  
4. DAVID W. TIMMS D.O.B. 11-14-78 HAS BEEN ARRESTED FOR:
  - A. DISTRIBUTION/ MANUFACTURE OF CONTROLLED SUBSTANCES
  - B. ESCAPE FROM OFFICIAL CUSTODY CONVICTED
  - C. POSS/USE OF CONTROLLED SUBSTANCES CONVICTED
  - D. POSSESSION OF PARAPHERNALIA
  
5. JESSICA L. SHELLEY D.O.B. 11-05-78 HAS BEEN ARRESTED FOR:
  - A. POSSESSION OF METHAMPHETAMINE W/INTENT TO DISTRIBUTE
  - B. POSSESSION OF DRUG PARAPHERNALIA
  - C. POSSESSION OF CONTROLLED SUBSTANCES CONVICTED

D. POSSESSION OF DRUG PARAPHERNALIA CONVICTED  
E. JESSICA IS CURRENTLY AWAITING TRIAL FOR 2 COUNTS  
DISTRIBUTION OF METHAMPHETAMINE.

6. ALLEN P. STEVENS D.O.B. 6-30-65 HAS BEEN ARRESTED FOR:  
A. POSSESSION OF MARIJUANA CONVICTED  
B. DOMESTIC ASSAULT

7. CHESLEY L. CHRISTENSEN D.O.B. 7-13-65 HAS BEEN ARRESTED  
FOR:

- A. POSSESSION AND USE OF CONTROLLED SUBSTANCES CONVICTED  
B. POSSESSION WITH INTENT TO DISTRIBUTE  
C. POSSESSION OF MARIJUANA  
D. POSSESSION OF METHAMPHETAMINE  
E. CHESLEY WAS ON FELONY PROBATION UNTIL 9-17-01

8. TERRY A. HANKS D.O.B. 10-28-46 ( A CO-HABITANT OF THIS  
RESIDENCE WITH PAULA POULSON) HAS BEEN ARRESTED FOR:

- A. POSSESSION OF MARIJUANA CONVICTED

IN ADDITION TO THE NAMES LISTED ABOVE MORE THAN 14 OTHER  
SEPARATE VEHICLES HAVE ARRIVED AT THIS RESIDENCE AT DIFFERENT TIMES  
AND DATES, SOME OF THEM ON MORE THAN ONE OCCASION.

IT IS THE EXPERIENCE AND TRAINING OF DETECTIVES OF THE TASK  
FORCE THAT THIS ACTIVITY IS CONSISTENT WITH THE DISTRIBUTION OF  
CONTROLLED SUBSTANCES.

ON 8-12-02 DETECTIVES JENKINS AND WHATCOTT MET WITH A  
CONFIDENTIAL INFORMANT. THE INFORMANT STATED THAT PAULA POULSON  
HAS BEEN AND IS STILL SELLING A LOT OF METHAMPHETAMINE FOR GARY  
SORENSEN.

YOUR AFFIANT FEELS THIS INFORMATION IS RELIABLE FROM THIS  
INFORMANT BECAUSE THIS COINCIDES WITH INFORMATION THAT DETECTIVES  
THOMAS AND EKKER RECEIVED FROM A CITIZEN INFORMANT. THE CITIZEN  
INFORMANT TOLD DETECTIVES THAT THE INFORMANT HAS SEEN PAULA POULSON  
AT GARY SORENSON'S RESIDENCE MORE THAN ONCE PICKING UP  
METHAMPHETAMINE. THE CITIZEN INFORMANT HAS PERSONAL KNOWLEDGE THAT  
PAULA IS SELLING THE METHAMPHETAMINE FOR GARY SORENSON.

ON 8-8-02 DETECTIVES FROM THE CENTRAL UTAH NARCTICS TASK FORCE  
AMONG OTHER OFFICERS EXECUTED A SEARCH WARRANT AT GARY SORENSON'S  
RESIDENCE. FOUND AT THIS RESIDENCE WERE METHAMPHETAMINE, SCALES,  
PACKAGING MATERIAL, OWE SHEETS PARAPHERNALIA I.E. GLASS PIPES FOR  
METH AND MARIJUANA. GARY SORENSON WAS NOT AT THE RESIDENCE AT THAT  
TIME. GARY SORENSON HAS BEEN SEEN AT PAULA POULSON'S RESIDENCE ON  
8-9-02 AND 8-10-02. THERE IS CURRENTLY AN ARREST WARRANT OUT FOR  
GARY SORENSON.

YOUR AFFIANT THEREFORE PRAYS A SEARCH WARRANT BE GRANTED FOR

THE RESIDENCE OF PAULA POULSON LOCATED AT 480 NORTH 100 WEST MT. PLEASANT, UTAH. TO INCLUDE THE HOUSE, ANY OUTBUILDING, PERSONS AND VEHICLES THAT ARE AT THE RESIDENCE AT THE TIME THE SEARCH WARRANT IS EXECUTED. WE ALSO ASK TO SEARCH FOR EVIDENCE IN ANY COMPUTER AT THIS RESIDENCE. THE COMPUTER AND ANY DIGITAL STORAGE MEDIA THAT WOULD INCLUDE BUT NOT LIMITED TO 3X5 FLOPPY DISKS, ZIP DISKS AND CD ROMS AND ANY DEVICE THAT CAN BE CONNECTED TO THE INTERNET. THE PURPOSE FOR THIS IS THAT COMPUTERS ARE OFTEN FOUND IN HOMES, THAT INFORMATION SUCH AS OWE SHEETS, NAMES AND ADDRESSES CAN BE STORED HERE. ALSO THERE CAN BE PHOTOS THAT CAN IDENTIFY SUBJECTS. WE ALSO ASK TO SEARCH E-MAILS FOR CORRESPONDENCE PERTAINING TO PURCHASE AND SALES OF METHAMPHETAMINE, BILLS OWING AND BILLS PAID.